No. 92-94

In The

Supreme Court of the United States

October Term, 1992

LARRY ZOBREST, SANDRA ZOBREST,
husband and wife;
JAMES ZOBREST, a minor, by
LARRY and SANDRA ZOBREST, his parents,

Petitioners,

v.

CATALINA FOOTHILLS SCHOOL DISTRICT,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

REPLY BRIEF FOR PETITIONERS

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ARGUMENT

The School District's bottom line is this: If a deaf child is to receive EHA on-site interpreter services which a local education agency agrees are necessary to his becoming educated, he and his parents must forego education at a religious school. The District's position, as given in its brief, is based upon (1) its false assumption that it has power, under the EHA, to deny needed interpreter services to any child on the premises of his or her private school, (2) its misconception of "primary effect advancing religion," (3) its misconception of "excessive entanglements," (4) its misrepresentations of positions taken by petitioners on material matters.

I. THE EHA DOES NOT GIVE LOCAL EDUCATIONAL AGENCIES POWER ARBITRARILY TO DENY NEEDED ON-SITE INTERPRETER SERVICES TO PRIVATE SCHOOL DEAF CHILDREN

For the first time, and at the level of this Court, the District states the position that, even if the Establishment Clause did not bar its providing interpreter services on the premises of a religious school, the EHA does not require it to provide on-site interpreter services at any private school even though, as here, the child's IEP required such services and only by receiving them at the site of his schooling, could the objectives of the Act be realized for him. (Br. Resp., 4, n. 4, 45, n. 17, 46.) Thus in spite of a ruling by this Court in favor of petitioners on the Establishment Clause issue, they would not be entitled to relief until a favorable outcome of yet more years

of litigation. In support of its contention, the School District says that its being required to furnish Jim an interpreter at his private school was "neither conceded by the School District nor adjudicated by the lower courts in this case." (*Id.* at 45-46.) This new position of the School District can only be described as a baseless effort suggesting Dickens' phrase in *Bleak House* of "wearying down the right":

1. The contention comes four and a half years late. The District appears not to recall that in 1988 it had issued an Individualized Education Program (IEP) for Jim in response to his parents' request for EHA classroom interpreter services at Salpointe. (See, A-128-134; Br. Opp. 2.) The IEP represented an acknowledgment of the District's belief that it had the obligation – but for the constitutional question – to provide him the on-premises service which his parents had requested.[1] The IEP is a local educational agency's determination, based on evaluation of the disabled child, that a program be afforded him (on which commitment his parents are entitled to rely).[2]

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[1] As the IEP recited, "*All parties agree* that Jim Zobrest needs the services of a sign language interpreter. *The* issue of whether the District is required by state or federal law to pay for such services while Jim is a student at Salpointe Catholic High School is currently the subject of litigation in Federal District Court." (A-128. Emphasis supplied.) "The services" obviously meant services where he was being educated, not somewhere else. The "litigation" concerned the District's Establishment Clause objection.

[2] Special education, in order to constitute a free appropriate public education, must comport with the child's IEP. *Board of Education v. Rowley*, 458 U.S. 176, 203 (1982). According to the U.S. Department of Education, "all services in the IEP must be provided in order for the agency to be in compliance with the Act." 34 C.F.R. Appendix C (Notice of Interpretation) at Question 45.

2. While, in view of the IEP's admission of Jim into the EHA program, it is irrelevant whether the issue of the District's Statutory obligation to provide EHA services on private school premises to Jim was adjudicated by the courts below, it is nevertheless true that the District took the unqualified position before the District Court that the EHA "*requires* it to provide . . . the services of a sign language interpreter, so long as James is educated *in* a *non-parochial* setting," (J.A. 34), that EHA "*mandates the provision of interpreter services in non-parochial schools,*" (J.A. 35), that "James has at his disposal *the services of an interpreter at any neighboring non-parochial high school he chooses to attend.*" (J.A. 37.) In its Opposition to Plaintiffs' Motion For Preliminary Injunction, at page 6, the District stated: "The District *admits* that the EHA *requires* it to provide for James, as part of a free appropriate public education, the services of a sign language interpreter, so long as James is educated in a *non-parochial setting.*" (Emphasis supplied.) Asked, in interrogatories, for "*the reasons*" why the School District refused to provide the services at Salpointe, the School District listed solely the Establishment Clause in response (J.A. 60) and added "because such action would violate *the first amendment* to the United States Constitution." (Emphasis supplied in all the foregoing quotations.)[3]

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[3] The School District (Br. Resp., 4, n. 4) says that it had "denied the allegation contained in Petitioners' Amended Complaint in this regard" (*i.e.*, in regard to whether the School

Before the Court of Appeals the School District stated that "it can and should be assumed that the School District would provide a sign language interpreter for James Zobrest not only at any public school, *but also at any private nonparochial school.*" (School District's Answering Brief in Court of Appeals, 6, n. 3. Emphasis supplied.) The School District reiterated this position on oral argument. (See taped transcript, Side 2, at 8th minute.) The Court of Appeals noted (A-4) without contradiction, that "if James attended either a public or a non-religious private school in Arizona," and (A-5, n.1) "if James' parents enrolled him in a non-sectarian private school or public school, the School District would be obliged to provide a sign language interpreter for him." Further the court pointed out that the district agreed that this was so. (*Ibid.*)

3. On September 27, 1988, the District Court ordered that counsel file, by March 27, 1989, "all dispositive motions." A copy of that order is appended to this brief. If the School District had believed that it was not required by EHA, or by the IEP issued thereunder, to provide on-premises service to Jim, the District would logically have sought dismissal on that ground, avoiding

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District was required to furnish the services on his school's premises), citing J.A. 56, paragraph 15 of its answer. But that paragraph merely answers paragraphs 24, 25, 26 and 27 of the petitioners' complaint, not one of which relates to this question. While it is true that, in the stipulation of facts (J.A. 88-89, paras. 13 and 15), the School District says that Jim could receive the services at a public high school, it says nothing about the problem in point here – namely, whether he could also receive them at a private school.

involving itself in constitutional litigation on the Establishment Clause. It did not.

4. The District does not state why, if it was required to furnish interpreter services to make possible a deaf child's education in a public school, it was free to deny that service to such a child in a private school. Nor does it discuss the extensive provisions of EHA and the related regulations generally pertaining to helping children in private schools.[4] Aside from the specific IEP issued by the District in this case, the latter require that program benefits for students enrolled in private schools be comparable in quality and scope for students enrolled in public schools. (34 C.F.R. §76.654.) They provide that, while a subgrantee may not use program funds to meet the needs of a private school, it "shall use program funds *to meet the specific needs of children enrolled in private schools.*" (34 C.F.R. §76.658. Emphasis supplied.) Further, a subgrantee may use program funds to make public personnel available *in* private schools "to the extent necessary to provide equitable program benefits designed for children enrolled in a private school" where those benefits are not normally provided by the private school. (34 C.F.R. §76.659.)

In any event, the District suggested that it was *empowered* to afford the service on private school

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[4] See 20 U.S.C. §1413(a)(4)(a) and relevant regulations 34 C.F.R. §§76.651-76.660, 300.341(b)(2), 300.350-300.452. EHA §1401(a)(10), so defines "secondary school" as to include *all* private schools. And see *Tribble v. Montgomery County Board of Education*, ___ F.Supp. ___, 19 IDELR 192 (M.D. Alabama, July 28, 1992).

premises. (Br. Resp., 4, n. 4.) That is to say, but for its Establishment Clause problem, it was free, under the EHA, to have provided the service to Jim which its IEP had acknowledged to be most appropriate. The District found Jim to be eligible for interpreter services and needing them. But the concept of eligibility would be meaningless if, coupled with it, was not the obligation to help the child eligible. Where the interpreter's service is needed in order to afford the child the indispensable thing of education for his very future, it would be absurd to suggest that he or she could not get the service at the only place where the education happens – namely, his school's classroom. It is, after all, *education* which is the sole aim of the EHA.[5]

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[5] The District seriously misrepresents the position of the United States as *amicus curiae*, stating: "The United States, in its *amicus* brief, agrees that the IDEA [EHA] does not establish an individual entitlement for students placed in private schools at their parents' option, *and only requires each state to offer private school students generally, but not individually, equitable opportunities to participate in services being offered to public school students.*" (Br. Resp., 46. Emphasis supplied.) By contrast, in place of those italicized words, what the United States did say (significantly) was this: " . . . it [EHA] does require the States to offer those students an equitable opportunity to participate in the services made available with federal funds to all students, and draws no distinction between students in sectarian private schools and those in secular private schools." (Br. United States, 13.) As has been seen, the "offer" (IEP) had *already* been made to Jim.

II. THE SCHOOL DISTRICT MISAPPLIES THIS COURT'S TEACHINGS ON "PRIMARY EFFECT ADVANCING RELIGION"

Here is what the District states as its reason for saying that affording Jim a sign language interpreter would have had an unconstitutional "primary effect advancing religion":

> . . . because the employee at issue here would participate in the transmission of religious concepts, the interpreter's services become directly related to the primary, religious oriented educational goals of both Salpointe and the Zobrests. The interpreter's activities *thus* have a primary effect of promoting religion.

Br. Resp., 7.[6] (Emphasis supplied.)

It is therefore the relationship of the interpreter's services to the "religious educational goals" of both Salpointe and the three Zobrests which the District defines as giving rise to a "primary effect advancing religion."

(a) *Salpointe's goals.* It is important, then, to look to the first-named vehicle of "primary effect," namely, Salpointe. The District, quite sensibly, at no point claims that Salpointe would have been a financial or material beneficiary of the interpreter services rendered Jim. Salpointe is not a party to this litigation. It has had no program for deaf students; hence the assistance to Jim would not have relieved it of any burden which it had been carrying. The

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[6] The respondent repeats the same point at page 16 of its brief. It also admits that not even a *public* high school would have been available to Jim within the District. (Br. Resp., 3, n. 3.)

District limits Salpointe's interest in this case to but a single thing, its "religious oriented *goals*." So far as Salpointe is concerned, therefore, the EHA aid to Jim would have had a primary effect advancing religion, solely because it would have been "directly related," not to Salpointe's income, properties, or other material benefits, but solely because – in some fashion – it "related" to Salpointe's "goals." While the District is correct in stating that Salpointe has indeed religious goals, "this Court has long recognized that religious schools pursue two goals, religious instruction and secular education." *Board of Education v. Allen*, 396 U.S. 236, 245 (1968). The reader of the District's brief is left uninformed as to how giving Jim an interpreter's service is "related" to Salpointe's achieving its religious goals, or why, if it also aids (as indeed it does) Salpointe to provide general, state-approved secular education, it has a primary effect advancing religion.

To shore up its "primary effect" contention in respect to Salpointe, the District, without explanation, shifts its argument to the many Supreme Court cases in which the issue was *financial and material aid to religious institutions* (*Everson, Allen, Lemon, Nyquist, Regan, Kendrick, Aguilar, Grand Rapids, Wolman, Witters*, etc.). To make its argument stick, based on the "aid" cases, the District must first establish that such institutional aid is an issue in the present case, as contrasted with the notion of a tenuous, unexplained "relationship" to an institution's assumed "goal," or end, as in the case of Salpointe.

(b) *Larry and Sandra Zobrest*. The District argues that providing Jim an EHA interpreter at the site of his education also has a primary effect advancing religion because it is "directly related" to "the primary, religious oriented

educational goals of . . . the Zobrests." The record (J.A. 89) states that Jim's parents "desire him to be educated, at the high school level, during his adolescence, in a Roman Catholic educational institution." It also states that there is no doctrine or rule of the Catholic Church that required that Jim attend a Catholic School. (*Ibid.*) The record discloses no general "religious oriented educational goals" of Larry Zobrest or of Sandra Zobrest and nothing beyond the fact that, for reasons of their religious conscience (and in order to fit Jim to survive in the world), they wanted their son to attend Salpointe. That mere fact of their having those goals for Jim is needlessly and wrongly parlayed by the District into the claim that giving Jim the interpreter services would have violated the Establishment Clause.

(c) *Jim Zobrest*. The record is silent as to any goals of any sort which he may have had. It may be assumed that he wanted help indispensable to his getting an education. But to state that, between ages 14 and 18, he was preoccupied with "religious oriented educational goals," though marvelously imaginary, does nothing but burden this litigation with the irrelevant.

For two reasons the District's entire "primary effect" argument must fail. First, whatever the interpreter's effect may be in respect to conveying religion to Jim, it is only one of multiple effects – a point made by petitioners (Br. Pet., 9-11) to which the District has not responded. Second, the only "primary effect" asserted by the District pertains to the "goals" of Salpointe and of the three Zobrests. Thus, while it is true, as the District claims, that the interpreter, as a public employee, would function in a religious school classroom, the District affords nothing to

show that his relationship (whatever that may be) to the goals of Salpointe, or of the Zobrests, has a *primary* effect advancing anybody's religion – as contrasted, for example, with the effect of aiding a severely disabled child to become educated. This Court has made it clear that the mere presence of a religious effect does not render that effect "primary." See, *e.g., Mueller v. Allen*, 463 U.S. 388, 393 (1983).

(d) *The interpreter.* The District builds its "primary effect" (as well as its "excessive entanglements") arguments on misstatements of the interpreter's function. Repeatedly, the District presses the point that, since by the interpreter, government "participates" in conveying religious messages and practices, his activity has the unconstitutional "primary effect." (Br. Resp., 11, 19.) So with the District's warning concerning the "potential risks" seen in *Aguilar*, that public employees in religious schools may be induced to "teach" religious values. (Br. Resp., 13.) "Participate" and "teach" are employed by the District in substitution for the one word that is accurate: *interpret*. The interpreter does *not* "participate" or "teach" according to the shifted meaning. These and other adroit shifts in meaning are obviously intended to bring this case within the purview of the institutional aid cases. See, for example, repeated citations to *Meek*. (Br. Resp., *passim*.) To this end, the District transmogrifies the interpreter into a member of an "instructional team." (Br. Resp., 10, 15, 32.) The intended effect is (again) to convey the impression that government, in providing an interpreter, would then be supplying a religious school part of a teaching unit. Which part? The respondent takes us back to Square One: the interpreter – whose job is to do

nothing but interpret. It is not easy to see how the "instructional team" idea aids the District's "primary effect" argument.

The interpreter's role is also used as the springboard for extreme and utterly speculative predictions of situations that are sure to occur if this Court rules in favor of petitioners. For example: if the Establishment Clause is held not to bar providing interpreter's services to Jim, then an atheist publicly paid teacher could lead a class in prayer (Br. Resp., 24-25), or public funds could be used to subsidize a religious print shop at Salpointe (*id.*, 25), or publicly paid "readers" could be placed in religious schools to read items to students selected by the principal. (*Id.* at 25.) While the District, with great effect, demolishes these straw men, they remain straw men. In the praying atheist example, the atheist is a teacher and thus one in authority; in the print shop example is a direct subsidy to a religious institution, not a publicly funded service to a child. The "readers" fable is analogous but for one thing: it lacks an interpreter to communicate on behalf of the "readers" (the "readers" obviously being in a role of teaching authority who are actually delivering the educational material to the entire class and are not simply the means whereby a deaf child can learn).

These examples are utterly speculative and not likely to occur in the real world of education and should not be heard to provide leverage for the working of an injustice to special needs children who *require* extraordinary measures. In terms of "primary effect," each program would have to be judged on its own facts.

(e) *"Coercion" and "endorsement"*. The District contends that its Governing Board members, District employees and local taxpayers "are faced with pressure, attempted to be exerted by the Zobrests through the force of federal laws to participate in James' religious upbringing." (Br. Resp., 39-40.) To this list it adds "administrators." (*Id.* at 42.) None of these, except the District, are complainants in this case, having party status. The District itself has not previously complained of any form of coercion. The *Zobrests* have certainly engaged in no "coercion," having done no more than request (the District's constant translation of this is "demand") that Jim be provided the help of an interpreter. To get itself into a "coerced" role of constitutional dimension, the District unblushingly tells the Court that "[t]he compulsion here is just as real as in *Lee*" (*id.* at 40) indeed, "equally or more substantial" than that. (*Id.* at 42.) In other words, the supplying or a sign language interpreter to Jim would have the same (or worse) effect on the Governing Board members, employees, local taxpayers and administrators as the "religious conformance compelled by the State," with its "embarrassment and intrusion" (*Lee v. Weisman*, 112 S.Ct. 2649, 2658), had on Daniel and Deborah Weisman in *Lee*. This amazing contention bespeaks its own extravagance.

Similar is the District's unsupported assertion that supplying the interpreter to Jim would be seen by "reasonable non- believers" as endorsement of religious orthodoxy. (Br. Resp., 39.)

III. THE SCHOOL DISTRICT MISAPPLIES THIS COURT'S TEACHINGS ON "EXCESSIVE ENTANGLEMENTS"

The District alleges that the providing of the interpreter for Jim would have created "excessive entanglements between church and state." (Br. Resp., 18-21.) If it be accepted, *arguendo*, that Salpointe is "church," the District discloses no relationship between the District and Salpointe that can remotely be considered an "excessive entanglement." To prop up its entanglement charge, the District is forced (a) to distort the teachings of *Walz v. Tax Commission*, 397 U.S. 664 (1970), as well as *Lemon v. Kurtzman*, 403 U.S. 602 (1971), (b) to blow up, out of all proportion, the few and minimal relationships which the District would have had with the interpreter.

The District, to get itself under the cover of *Walz*, repeatedly employs *Walz's* phrase, a "continuing day-to-day relationship," to describe the contact between the District and the interpreter – and thus to establish "excessive entanglements." (Br. Resp., 18, 19.) Attempting to make that phrase fit its entanglement claim, the District nevertheless fails to present the Court with the full text in which the phrase appeared. The *Walz* Court was in fact warning simply against *those sorts* of day-to-day relationships which arise from the imposition, on religious entities, of "governmental evaluation and standards."[7]

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[7] The actual text is this:

> To give emphasis to so variable an aspect of the work of religious bodies would introduce an element of *governmental evaluation and standards* as to the worth

The District chooses to ignore what this Court meant when it spoke of "excessive entanglements." Concerning that doctrine, the Court stated that "[t]he objective is to prevent, as far as possible, the intrusion of either [church or state] into the precincts of the other." (*Lemon*, supra, at 614.) "Some relationship," said the Court, "between government and religious organizations is inevitable." (*Ibid.*) It was against this background that the Court, in *Lemon*, voided programs adopted by Rhode Island and Pennsylvania, which necessitated, in the eye of the Court (quoting *Walz*), " 'sustained and detailed administrative relationships for enforcement of statutory or administrative standards' " (*Lemon, supra*, at 621), or "[a] comprehensive, discriminating, and continuing state surveillance" to ensure that the "pervasive restrictions" found in those states' statutes were obeyed. (*Id.* at 619.)

The District delves to buttress its claim that providing the interpreter would somehow give the "appearance of [governmental] endorsement" of religion, stating: "The sign language interpreter would . . . be one of the few people if not the only person there with whom James could communicate directly and with ease." (Br. Resp., 27.) While this stereotyping of deaf persons is contradicted by the mainstreaming principle (see Brief Amicus

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> of particular social welfare programs, *thus* producing a kind of continuing day-to-day relationship which the policy of neutrality seeks to minimize. Hence, the use of a social welfare yardstick as a significant element to qualify for tax exemption could conceivably give rise to confrontations that could escalate to constitutional dimensions.

Walz, supra, at 674. (Emphasis supplied.)

Curiae of Alexander Graham Bell Association for the Deaf, 5), it is also contradicted by the record, wherein the District itself testifies to Jim's direct communications with fellow students and teachers, *bypassing* the interpreter. (A-134.)

The District's out-of-scale magnification of the District-interpreter relationships (which, even in the District's brief, are both few and speculative) rated but a footnote in the Court of Appeals opinion (A-13, n. 5). But these were treated extensively in Judge Tang's realistic and common-sense dissent. (A-27 – A-32).

IV. THE SCHOOL DISTRICT HAS MISREPRESENTED POSITIONS TAKEN BY PETITIONERS ON MATERIAL MATTERS

That the Court may have a clear picture of this case as it comes before it, petitioners are required to point to erroneous characterizations by the District, of their positions on matters of material significance:

1. That the Zobrests claimed that "interpreter services are . . . legally mandated by the IDEA [EHA] for every student who voluntarily attends a private school . . . " (Br. Resp., 4, n. 4.) *In fact*: The Zobrests, as the record shows, made *no* such claim. The pages of their brief, to which the District directs the Court's attention, state simply that they believed that "James was statutorily qualified to receive the EHA service which he and his parents had requested." (Br. Pet., 7-8.)

2. That "importantly, the Zobrests chose Salpointe over a public school *solely* to further James Zobrest's

religious development. J.A. 89, paragraph 16." (Br. Resp., 18.) *In fact*: That paragraph reads: "James Zobrest is enrolled at Salpointe for the particular reason that his parents Larry and Sandra Zobrest, desire him to be educated, at the high school level, during his adolescence, in a Roman Catholic educational institution." It is obvious that they desired, for his very survival, the general, as well as religious, education offered him at Salpointe. (See Br. Pet., 9-11.)

3. That the Zobrests, at page 17 of their brief, "suggest that, like the prescribed diagnostic services in *Wolman v. Walter*, 433 U.S. 229 (1977), there is little or no danger of government participation in the religious function of Salpointe." (Br. Resp., 19.) *In fact*: Neither at page 17 of their brief, nor anywhere else in it, can any such statement be found.

4. That "the Zobrests then suggest that the sign language interpreter's code of ethics precludes him from participating in religious instruction. *Id.* [Brief For Petitioner, 17.] The Zobrests are wrong." (Br. Resp., 19.) *In fact*: Nowhere in their brief do petitioners make any such claim. What they say at the cited page 17 is this: "His [the interpreter's] function is mechanical, and the messages he communicates, *while partly religious*, are by and large the same messages that he would communicate in any secular school." (Br. Pet. 17-18. Emphasis supplied.) Indeed petitioners stipulated that the interpreter handles *all* communications, including those "of a religious nature." J.A. 93. Petitioners' brief at page 22 states: "That the interpreter conveys religious messages is a given in this case."

5. That " . . . the Zobrests argue [at pages 9-11 of their brief] that the effect of assisting religious practice and education somehow is diluted because the interpreter communicates mostly secular instruction . . . " (Br. Resp., 22.) But petitioners contradict themselves by admitting that one effect of the interpreter's service "would be to further James' religious development." (Br. Resp., 22, n. 10.) *In fact*: Petitioners have never contended that Jim's religious education at Salpointe is "diluted." They have not merely admitted, but emphasized, that Jim's attendance at Salpointe is in part to further his religious development. The District seemingly chooses to miscast the petitioners' position in order that it may demolish the straw man it erects.

6. That the Zobrests "cannot in good faith claim [at page 19 of their brief] that this case involves no more than the single sign language interpreter at Salpointe." (Br. Resp., 29, n. 13.) *In fact*: At page 19 of their brief the petitioners merely state that their case for James is readily distinguishable from the *Wolman* program which would have subsidized a parochial school system "as a whole." (Br. Pet., 19.)

CONCLUSION

The School District and its supporting *amici* warn the Court that reversal in this case would spell catastrophe to the principle of church-state separation. Focused singularly on the fact that a *religious* school would have been the site of the interpreter's aid to a deaf boy, they ignore the boy, his needs, his parents' liberty to choose that

school – and the justly inclusive purposes of the EHA. The petitioners present no challenge to *Lemon*; but the contentions of the District and its supporters have the inevitable effect of challenging *Everson, Allen, Mueller* and *Witters*. If the latter are successful, a fateful step toward a secularist legal regime will have resulted.

Justice Goldberg, three decades ago, noted that devotion to the principles of religious liberty sometimes "presents no easy course" and calls for a role of governmental neutrality. He added, in words precisely relevant to this case:

> But untutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with religion which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to religion. Such results are not only not compelled by the Constitution, but, it seems to me, are prohibited by it.

Goldberg, J., joined by Harlan, J., concurring in *School District of Abington Township v. Schempp*, 374 U.S. 203, 305-306 (1963).

For the foregoing reasons, in addition to the reasons stated in Brief For Petitioners, it is respectfully submitted that the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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APPENDIX

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

(CIVIL MINUTES - GENERAL)

Civil Case No.: CIV-88-516-TUC-RMB

Date: Sept. 27, 1988

Title: LARRY ZOBREST vs. CATALINA FOOTHILLS SCHOOL DISTRICT

(Filed Sept. 30, 1988)

HONORABLE RICHARD M. BILBY

Proceedings:

____ Open court ____ Chambers __x__ Other

STATUS CONFERENCE BEFORE LAW CLERK:

IT IS ORDERED:

1. Counsel shall submit to the Court settlement status reports on October 10, 1988, and February 10, 1989.

2. Counsel shall exchange and file with the Court a copy of their respective witness lists no later than February 13, 1989.

3. All discovery shall be completed and dispositive motions filed by March 27, 1989.

4. Counsel shall comply with Local Rule 42 by filing their joint proposed pretrial order by 5:00 p.m., April 27, 1989

_____copies issued to:

/s/ Berning, Richardson, RMB
